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 Arizona State Bar No. 022418  
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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA**

Barbara Albert

Plaintiff

v.

Aetna Life Insurance Company, a foreign  
 corporation; Marriott International, Inc., a  
 foreign corporation; Short Term Disability  
 Plan and LTD Plan, ERISA-governed  
 employee benefit plans;

Defendants.

No.

**COMPLAINT**

Comes now the Plaintiff, Barbara Albert, and by her attorney, PAUL J.  
 DOMBECK, and complaining against the defendants, states:

**JURISDICTION AND VENUE**

I.

Jurisdiction of the court is based upon the Employee Retirement Income  
 Security Act of 1974 (ERISA); and in particular, 29 U.S.C. §§1132(e)(1) and 1132(f).  
 Those provisions give the district courts jurisdiction to hear civil actions brought to  
 recover benefits due under the terms of employee welfare benefit plans which, in this  
 case, consists of group short term and long term disability benefit plans to employees

1 of Marriott International, Inc. ("Marriott") set forth as *Short Term Disability Plan* and  
2 *LTD Plan* ("Plans" or "Plan(s)" or "Plan") administered and/or adjudicated by Plan(s)  
3 Fiduciary, Aetna Life Insurance Company ("Aetna"), provided by Marriott to plaintiff  
4 Barbara Albert, one of its employees. In addition, this action may be brought before  
5 this Court pursuant to 28 U.S.C. §1331, which gives the District Court jurisdiction over  
6 actions that arise under the laws of the United States.

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8 II.

9 The ERISA statute provides, at 29 U.S.C. §1133, a mechanism for  
10 administrative or internal appeal of benefit denials. Those avenues of appeal have  
11 been exhausted.

12 III.

13 Venue is proper in the Phoenix District of Arizona. 29  
14 U.S.C. §§1132(e)(2), 28 U.S.C. §1391, ERISA § 502(e), because the "breach" of the  
15 subject disability benefit Plans occurred in Maricopa County, Arizona, and because  
16 defendants may be found in Maricopa County Arizona.

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18 **NATURE OF ACTION**

19 IV.

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21 This is a claim seeking an award to Plaintiff of disability income benefits  
22 pursuant to the aforereferenced subject Plans, said Plans designated in Plan  
23 Documents as Group Policy Number (GP) 0698443 by Aetna, providing group Short  
24 Term Disability (STD) and Long Term Disability ("LTD") benefits to employees of  
25 Marriott USA, Inc ("Employer Marriott USA" or "Marriott"); said Plans are provided by  
26 Aetna and administered by Aetna under group control numbers and/or policy  
27 numbers not limited to Plan Number 504, GP-0698443 and Claim Number 3168771.  
28 This action, seeking recovery of benefits, is brought pursuant to §502(a)(1)(B) of  
ERISA 29 U.S.C. §1132(a)(1)(B).

**THE PARTIES AND THE DISABILITY PLANS**

V.

That the Plaintiff is a resident of the County of Maricopa, State of Arizona, and has been at all times hereinafter stated.

VI.

That the Plans, as described in the Plan(s) documents, are, upon information and belief, welfare benefit plans providing respectively Group Short Term Disability and Group Long Term Disability for employees of Marriott.

VII.

That Employer Marriott is a Plan(s) fiduciary per 402(a) of ERISA, and upon information and belief, is a Washington D.C. corporation licensed to and doing business in Arizona, and further that Defendant Aetna, is a Connecticut company licensed to and doing business in Arizona.

VIII.

That Marriott, is the LTD Plan(s) administrator, and maintains health care coverages that are funded through Plan Number 504, Group Control Number GP-0698443 and/or Claim Number 3168771, issued by Aetna, and that claims upon said coverages are in actuality functionally administered and/or adjudicated by Aetna, and that Marriott was at all times relevant the employer of Plaintiff Barbara Albert.

IX.

That as claims adjudicator, defendant Aetna reviews disability claims for defendant Marriott for the purpose of approving, adjusting, denying or issuing benefits, based upon information that Aetna and Marriott generate.

X.

That the Plaintiff, as an employee of Marriott was eligible for certain

1 employee benefits, including disability plans and policies, as per the terms and  
2 conditions of the written Plans, as outlined on Summary Plan Description brochures  
3 and/or Group Benefit Plan documents offered to, disseminated amongst and granted  
4 to employees of Marriott, including but not limited to the benefits described as a  
5 Group Policy contract between Aetna as the Company and Marriott, as a subscriber  
6 to the Plan Number 504, Group Control Number GP-0698443 and/or Claim Number  
7 3168771. That Barbara Albert elected and/or was provided benefit coverage paying  
8 60% of monthly gross salary, and paid all premiums therefor as required.

9 XI.

10 At all times relevant hereto, the subject Plans constituted “employee  
11 welfare benefit plan(s)” as defined by 29 U.S.C. §1002(1); and incident to her  
12 employment, Barbara Albert received coverage under the Plans as a “participant” as  
13 defined by 29 U.S.C. §1002(7). This claim relates to benefits under the foregoing  
14 Plans.

15 XII.

16 On or about September of 2004, Mrs. Albert began working for Marriott  
17 Vacation Club International, in Palm Desert California as a Timeshare Sales  
18 Executive. According to a job position description provided by Marriott, that  
19 occupation requires functioning “*at the highest level of mental alertness and mental*  
20 *poise required for high level communication including presentations with potential*  
21 *buyers*”. Under the STD and LTD Plans, Mrs. Albert is entitled to a monthly disability  
22 benefit if she is essentially unable to perform the material duties of her “regular  
23 occupation” as a Timeshare Sales Executive and/or any other occupation.  
24

**STATEMENT OF FACTS**

## XIII.

At all appropriate times, Barbara Albert was a full-time employee of Marriott, USA, and she was actively employed at Marriott until on or about March 26, 2010 when she ceased working due to fibromyalgia, chronic fatigue, Raynaud's syndrome, a spinal condition, irritable bowel syndrome and resulting depression, anxiety and panic attacks. From March 27, 2010 until the present Barbara Albert has not engaged in any substantial gainful activity.

## XIV.

On or around March 27, 2010, and while still maintaining status as a Marriott employee Plaintiff Barbara Albert made a timely application under the subject Short Term Disability (STD) Plan, under claim number(s) not limited to claim number 3168771, stating that on or about March 27, 2010, she met the Plan(s) definitions of disability on account of medical conditions which rendered her unable in pertinent part to *"perform the material duties of your own occupation solely because of an illness, injury or disabling pregnancy-related condition"*.

## XV.

Said medical conditions were specifically, severe fatigue, fibromyalgia, a spinal condition, and severe anxiety/depression and panic attacks that resulted from and/or was exacerbated by those physical conditions, and supported the plaintiff's claims for LTD benefits with medical records and reports and other evidence certifying her disability

## XVI.

Based upon this application and supporting evidence Aetna initially awarded the plaintiff STD benefits from March 28, 2010, and paid said benefits through October 15, 2010, the maximum STD benefit payment duration limitation,

1 contemporaneous with which the plaintiff also completed a timely application for Long  
2 Term Disability benefits and received LTD benefits from the defendant until  
3 September 25, 2012.

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XVII.

By October 10, 2012 Aetna informed the plaintiff that pursuant to an  
alleged further review of Plaintiff's medical evidence, that the plaintiff's diagnosed  
impairments and treatments supposedly no longer met the requisite definition(s) of  
disability after the dates of September 25, 2012 (for the LTD claim), and denied the  
plaintiff's benefits beyond that date. Meanwhile, on or around May 4, 2012, the  
plaintiff was awarded Social Security Disability benefits retroactive to August 1, 2010.

XVIII.

On or about April 3, 2013, Barbara Albert submitted to Defendant Aetna  
an administrative appeal of the denial of her LTD benefits in accordance with 29  
U.S.C. § 1133. In support of this appeal, Barbara Albert submitted additional medical  
evidence from treating and examining physicians and vocational and other sources  
demonstrating substantially that her condition had not improved, and thereby met and  
continued to meet the Plan(s)' requisite disability definitions, and also advised Aetna  
specifically that Aetna improperly focused its denial upon various mental and  
psychological signs and symptoms and failed to properly consider Ms. Albert's  
fibromyalgia, chronic fatigue and spinal impairments, including evidence of worsening  
pain with activity, and pain radiating to her arm and an anticipated work loss of at  
least four full days each month, and Plaintiff also referenced December 2012 imaging  
studies showing moderate to severe narrowing at the L4-5 level and also a T2 radial  
tear and osteoarthritis consistent with Raynaud's syndrome in her hands; asking that  
Aetna reverse the denial and reinstate Ms. Albert's benefits in light of the evidence.

XIX.

In response to this appeal, Aetna reinstated LTD benefits to the plaintiff

1 on or about May 28, 2013.

2 XX.

3 Then in the first quarter of 2014, Aetna initiated yet another claim review,  
4 and in conjunction with this review required that Mrs. Albert attend a March 18, 2014  
5 medical examination by a consultant hired by Aetna, Arlen Rollins, D.O.

6 XXI.

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8 Prior to the March 18, 2014 examination Plaintiff through counsel wrote  
9 Aetna a number of letters requesting some verification controls upon the examination  
10 process, specifically that Ms. Albert be permitted to bring her witness into the  
11 examination room with her and also video-record or at least audio-record the  
12 proceedings, requests which Aetna wholly refused, and moreover on March 18, 2014  
13 consultant Rollins actually refused to allow the plaintiff's husband into the  
14 examination room with her.

15 XXII.

16 Following the March 18, 2014 consultative examination, on or about May  
17 12, 2014, Aetna, based upon the report prepared by consultant Rollins, denied the  
18 plaintiff's LTD claim for ongoing benefits and also stating that "*based upon the totality*  
19 *of the available information within your claim file, we have determined that you are*  
20 *not precluded from performing the material duties of your own occupation*".

21 XXIII.

22  
23 In response to Aetna's denial of the LTD claim and in response to the  
24 assertions and conclusions of Aetna's medical consultant Rollins, the plaintiff  
25 submitted to Defendant Aetna another appeal in accordance with 29 U.S.C. § 1133;  
26 specifically on December 5, 2014 the plaintiff submitted a written appeal to Aetna  
27 noting in pertinent part:

28 A. That it was apparent that Aetna's and consultant Rollins' refusal to allow any non-

1 defense witnesses or any recordings of what Rollins alleges transpired in the  
2 examination had resulted in a flawed process and flawed conclusions and an unfair  
3 denial of the plaintiff's claim for ongoing benefits.

4 B) That shortly after the March 18, 2014 examination by consultant Rollins Ms. Albert  
5 conveyed to Aetna representatives her written impressions of the examination  
6 process and also of consultant Rollins, advising in pertinent part that consultant-  
7 Rollins was dismissive with her and also would not permit Ms. Albert's husband to  
8 carry Ms. Albert's bag into the examination room with her, but that Rollins cited Ms.  
9 Albert's ability to carry the bag as evidence against her.

10 C) That the crux of Rollins' examination report was flawed in that Rollins represented  
11 that Ms. Albert's symptoms and presentation were supposedly exaggerated and her  
12 immune and spinal symptoms were supposedly non-severe and/or should not  
13 otherwise preclude a return to work; Specifically that Rollins' conclusion that Ms.  
14 Albert's conditions were subjective in nature and that degenerative spinal changes  
15 were "normal" for her age and not severe was flawed.

16 D) that after Rollins essentially represented Ms. Albert's spinal symptoms as 'not  
17 severe', at least two other spinal specialists who examined Ms. Albert and concluded  
18 that Ms. Albert's spinal condition was so severe (as clinically indicated by the imaging  
19 studies) that if a surgical correction was not done soon Ms. Albert would likely end  
20 up with greater permanent damage; and further, that based upon comparative  
21 imaging studies, Ms. Albert's spine has been this way since at least 2012.

22 E) That Ms. Albert's surgical consult records from August 4, 2014 indicated Ms. Albert  
23 had a lot of back pain and yet was hoping to rejoin the work-force if the pain could  
24 one day improve, and that a treating physician (Estelle Farrell, D.O.) over the last  
25 couple of years has tried conservative approaches which did not work, including  
26 Physical Therapy.

27 F) That the new 2014 spinal MRI showed a moderate to severe problem at the L4-5  
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1 level, and that the 2012 comparative study also showed the same problem; and that  
2 the surgeon had also concluded that Ms. Albert's pain symptoms were clinically  
3 indicated by the imaging and other findings.

4 G) that Ms. Albert was very afraid of the risks of the invasive surgical procedure  
5 recommended by the three specialists she consulted, yet because she did not want  
6 to exist on narcotics and was actually trying to fix her condition and also was worried  
7 about the consequence of leaving the worsening condition uncorrected, she planned  
8 to undergo the recommended surgical procedure;

9 H) That on or about October 28, 2014 Ms. Albert underwent the Lumbar Disectomy  
10 and Fusion procedure.

11 I) That the fact that Ms. Albert needed and underwent spinal surgery was not  
12 consistent with the 'non-severe' spinal condition and the 'exaggerating' profile that  
13 consultant Rollins attempted to portray.

14 J) that Aetna hired a detective firm to follow Ms. Albert, presumably to seek evidence  
15 that she could work, yet the surveillance footage did not show Ms. Albert doing  
16 anything unusual for her claimed condition, that said footage to the contrary depicted  
17 Ms. Albert bending a few times with some difficulty and with her back slightly hunched  
18 over and demonstrated she had a diminished ability to grasp items.

19 K) That said surveillance footage also recorded a sedentary visit to a nail salon and  
20 also Ms. Albert lifting an item that appeared only five pounds or less, and also  
21 showed a grocery store employee taking Ms. Albert's groceries and placing them in  
22 the car and Ms. Albert refraining from attempting this task herself; and that none of  
23 these activities observed by Aetna's surveillance investigator were inconsistent with  
24 Ms. Albert's symptoms and limitations and certainly did not suggest Ms. Albert had  
25 any capacity for full-time work.

26 L) That additionally, Ms. Albert's treating physician Farrell had clarified in a written  
27 opinion on or about April of 2014 that none of the activities depicted in the  
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1 surveillance footage were inconsistent with Ms. Albert's limitations or remaining  
2 capacity.

3 M) That Aetna's reliance for denial upon surveillance report conclusions about the  
4 plaintiff's interaction with her grandchildren and Plaintiff's supposed membership in  
5 a group were misplaced as the surveillance report of these activities was inconclusive  
6 if not misleading regarding the scope of these activities and their bearing upon the  
7 plaintiff's ability to sustain full-time competitive work as contemplated by the subject  
8 Plan's disability definition

9 N) That Aetna's reliance for denial upon surveillance report conclusions were also  
10 problematic because Aetna's surveillance investigator, upon information and belief,  
11 appeared to have utilized misleading and/or deceptive tactics to elicit responses from  
12 people in Ms. Albert's neighborhood; specifically upon information and belief said  
13 representatives appear to have represented themselves as representatives or  
14 affiliates of Ms. Albert's former employer Marriot and/or other potential employers,  
15 and in that capacity misleadingly implied to witnesses that Ms. Albert was seeking  
16 employment, and thereby misleadingly imparted to potential witnesses that Ms. Albert  
17 was capable of the activity which comprises the issue at dispute in the claim they  
18 were investigating; that thereby said investigators appear to have improperly  
19 influenced potential witnesses.

20 O) That despite investigative tactics and results that were unreliable if not misleading  
21 the surveillance footage and also the November 2013 background check report  
22 authored by Aetna's investigator (Claims Bureau, USA) nevertheless did not indicate  
23 evidence of any activity inconsistent with Ms. Albert's claimed impairments or which  
24 was otherwise suggestive of a competitive work-capacity, and in sum actually  
25 supported Ms. Albert's account of her restrictions and residual lifestyle.

26 P) That based upon available patient-reviews consultant Rollins is generally not well-  
27 regarded by patients and that Ms. Albert indicated Dr. Rollins was dismissive with her  
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1 and somewhat rough in his physical examination of her.

2 Q) That in attempting to dismiss and/or minimize Ms. Albert's treating physicians'  
3 conclusions, consultant Rollins' conclusions were so sweeping that Rollins also  
4 managed to contradict and dismiss Aetna's own prior medical consultant's opinion  
5 that the case evidence demonstrated Ms. Albert cannot sustain any level of  
6 competitive work.

7 R) That consultant Rollins inaccurately concluded based upon erroneous information  
8 contained in Aetna's November 2013 background check report that the claimant and  
9 her husband have a home business, failing specifically to recognize and/or  
10 understand that said business belonged to and was run by Barbara's husband Mr.  
11 Albert.

12 S) That not all available records were addressed in consult Rollins' report. Among  
13 those Rollins did not address were diagnostic and treatment records for chronic  
14 cough; a functional capacity report by treating physician, doctor Farrell, that contained  
15 descriptions of Ms. Albert's impairments and physical limitations; a Spirometry test  
16 showing Ms. Albert coughed throughout the spirometry exam procedure and had  
17 dyspnea after the test; a Thorax CT scan showing a lesion on the lung and bilateral  
18 pleural effusion indicating why Ms. Albert had the persistent cough.

19 T) That consultant Rollins' report listed certain records and purported to give a  
20 summary of those records, yet some of these summaries distorted by omission the  
21 purpose of the 'summarized' consult;  
22

23 1) A June 5, 2013 record for a lung-consult that consultant Rollins only  
24 considered as evidence that Ms. Albert was not complaining about her spine.

25 2) Consultant Rollins referenced 'normal' findings in an October 15, 2013  
26 John L. Sherman M.D consult record, but failed to mention that doctor  
27 Sherman also observed Ms. Albert's persistent coughing; that during his own  
28 examination of Ms. Albert, Rollins observed her coughing but declared Ms.

1 Albert was only doing so for psychological reasons, despite the pulmonary  
2 imaging study and spirometry test indicating a problem with the lungs.

3 3) Consultant Rollins cited a September 18, 2013 endocrinology consult as  
4 an example of a 'normal' spinal finding but neglected to also mention that the  
5 purpose of that consult was to address Ms. Albert's fatigue (a symptom for  
6 which there was an objective basis; namely lab results contemporaneous with  
7 that same exam, indicating hypothyroid condition caused by the removal of  
8 Ms. Albert's thyroid gland just one month earlier).

9 4) A statement in Ms. Albert's July 26 2013 consult with Samuel Bailey M.D.  
10 was presented by consultant Rollins in isolation of pertinent additional facts:  
11 specifically Rollins noted this consult record said Ms. Albert was complaining  
12 of a 'dry, burning sensation and difficulty swallowing', but Rollins only  
13 declared "he [Bailey] explained to her [Albert] that the pain she was having  
14 seems to be quite out of proportion to her examination findings", suggesting  
15 that Ms. Albert was exaggerating her symptoms, yet neglecting to mention  
16 that it was apparent doctor Bailey only meant by those words that he was  
17 concerned Ms. Albert's complaints may suggest a more serious problem; and  
18 that Bailey and/or other doctors in fact consequently ordered testing and  
19 surgery that actually confirmed thyroid cancer, and that Ms. Albert then had  
20 to have surgery to remove the cancer.

21 5) Consultant Rollins cited the May 21, 2013 report of Aetna 'psychiatric'  
22 consultant Roy Sanders as evidence that Ms. Albert was supposedly not  
23 physically impaired without mentioning or otherwise considering that Doctor  
24 Sanders also noted in his report that he was hired to review psychiatric issues  
25 only and that his report clearly showed that he deferred the physical  
26 impairments to specialized physicians.

27 6) Consultant Rollins was critical that the social security federal hearing office  
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1 which found Ms. Albert disabled gave little credence to a May 2012 report of  
2 a "single-visit" social security state agency doctor who concluded Ms. Albert  
3 could work, but inexplicably failed to credit the state agency's rationale that  
4 the reports and conclusions of Ms. Albert's treating physicians (Wallace M.D.  
5 and Leitner M.D.) were more credibly consistent with Ms. Albert's complaints.

6 U) That in reaching his opinions and conclusions, consultant Rollins also improperly  
7 relied in pertinent part upon broad categories of 'daily living activities' as supposed  
8 evidence Ms. Albert should be able to sustain full-time work:

9 1) Consultant Rollins claimed Ms. Albert 'admitted to using the computer for  
10 four hours a day, two in the a.m. and two in the p.m', but failed to explore any  
11 context of limitations and restriction Ms. Albert had with this activity and did  
12 not allow Ms. Albert time or opportunity during his examination of Ms. Albert  
13 to explain those restrictions and limitations

14 2) Consultant Rollins implied that Aetna surveillance footage showing Ms.  
15 Albert walking suggested Ms. Albert was less credible but did not  
16 acknowledge or otherwise consider that Ms. Albert never said she could not  
17 walk nor that the footage did not capture the 'down-time' and the 'bad days',  
18 nor how long it could take Ms. Albert to recover from walking or shopping, nor  
19 that she appeared to be in pain in some of the footage.

20 3) Consult Rollins appeared critical Ms. Albert watched television for some  
21 three hours per day, yet failed to address or explore Ms. Albert's postural  
22 difficulties and limitations with this activity or how viewing a television  
23 suggests the capacity to sustain full-time competitive work.

24 4) Consultant Rollins improperly concluded Ms. Albert was not credible and  
25 could work full-time because he saw her carry a 9.5-lbs bag into the  
26 examination room despite Aetna's own surveillance conducted on the day of  
27 the examination showing Ms. Albert's husband carrying that bag up until  
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1 Rollins' office staff told Ms. Albert that her husband would not be allowed to  
2 carry the bag into the examination room.

3 XXIV.

4 On or about October 28, 2014 Ms. Albert underwent the spinal  
5 discectomy and fusion surgery that Consultant Rollins failed to recognize or  
6 acknowledge she needed, and for the next three months until late January 2015 Ms.  
7 Albert was in various phases of recovery ranging from bed rest to physical therapy.

8 XXV.

9  
10 On or about November 7, 2014, Ms. Albert through counsel gave notice  
11 of appeal of Aetna's May 12, 2014 denial, and over the next several weeks submitted  
12 to Aetna various medical, testimonial and other evidence and argument, including the  
13 pre-surgical consults, and as they became available, the records of Ms. Albert's  
14 recent surgery and ongoing post-surgical recovery records as well as records  
15 reflecting treatment of thyroid cancer, and cardiac consults for shortness of breath  
16 and dizziness.

17 XXVI.

18 By late January of 2015 Ms. Albert's spinal condition had improved as  
19 a result of the spinal surgery, and Ms. Albert through counsel advised Aetna of this,  
20 but also advised that Ms. Albert could not attempt to return to work until post-  
21 operative recovery was complete.

22 XXVII.

23 Despite Ms. Albert's submission of these arguments and evidence, on  
24 or about March 11, 2015, Aetna issued a "final" denial of Ms. Albert's claim alleging  
25 in pertinent part that Ms. Albert's treating doctor (Farrell) supposedly had made a  
26 remark in August of 2014 that Aetna claimed suggested Ms. Albert could work; and  
27 also that up until the time Ms. Albert actually underwent surgery Aetna believed Ms.  
28

1 Albert should have been able to sustain full-time competitive work.

2 XXVIII.

3 Aetna misconstrued and distorted the observations of treating physician  
4 Farrell in order to justify its denial; specifically and in pertinent part, Aetna misquoted  
5 a portion of an August 14, 2014 doctor Farrell consult record as supposedly saying  
6 "...ongoing medical issues reflected the ability to tolerate working," when the written  
7 record confirms doctor Farrell actually said "...[Ms. Albert] has ongoing medical issues  
8 that could affect her ability to have tolerance to working; thereby Aetna distorted  
9 doctor Farrell's words, falsely suggesting the doctor's expression of Ms. Albert's  
10 inability to sustain work as language suggesting an ability to work.

11 XXIX.

12  
13 After receiving Ms. Albert's November 7, 2014 appeal Aetna hired two  
14 more consultants to review Ms. Albert's medical files, the first who claimed that the  
15 probative value of Ms. Albert's treatment records was supposedly diminished  
16 because providers signature dates supposedly differed from treatment dates, and the  
17 second who declared Ms. Albert disabled only for a few weeks right before her  
18 October 2014 spinal surgery and during her recovery time, and also claimed the  
19 surveillance footage of Ms. Albert walking with difficulty suggested Ms. Albert could  
20 somehow sustain work.

21 XXX.

22 Around this same time Aetna retained the consultants referenced in  
23 paragraph XXIX, Aetna also retained or employed a vocational consultant who was  
24 given, among other documents, the report of the second consultant referenced in  
25 paragraph XXIX (a Doctor Rhea), and based in pertinent part upon that report  
26 Aetna's vocational consultant concluded Ms. Albert had no transferable skills or  
27 functional abilities.  
28

1 XXXI.

2 Aetna's final March 11, 2015 denial neglected to address the conclusions  
3 of Aetna's own vocational consultant yet declared that Ms. Albert's records failed to  
4 support disability and that Ms. Albert was able to perform the duties of her own  
5 occupation as a Sales Executive.

6 XXXII.

7 Since March 27, 2010, Barbara Albert has been "totally disabled" as  
8 such term is defined in the subject Plans, inclusive of any waiting periods and has  
9 remained under continuous medical care by physicians.  
10

11 XXXIII.

12 As a result of the issuance of the final March 11, 2015 denial, all  
13 administrative remedies have been exhausted, and this matter is ripe for judicial  
14 review.

15 XXXIV.

16 That the plaintiff was only able to potentially sustain competitive full time  
17 employment by late March of 2015 following the conclusion of her post-operative  
18 therapy treatments, and until at least the end of March 2015 she met all pertinent  
19 Plan(s)' definitions of total disablement.  
20

21 XXXV.

22 That the plaintiff requests the Court declare the rights and legal  
23 obligations of the parties and declare that the Long Term Disability Plan constitutes  
24 a binding and enforceable agreement that continued at least through January of  
25 2015. That the plaintiff prays for full relief for accumulated and accumulating monthly  
26 benefits and interest through the conclusion of litigation.

27 XXXVI.

28 That this litigation is timely brought having followed within appropriate



1 and/or applicable time limitations the defendants' final denial and resultant exhaustion  
2 of administrative remedies, and is appropriate for a Federal Court deciding Short  
3 Term and Long Term Disability issues per Section 502(a)(1)(B) of ERISA.

4  
5 **Count One: Claim for Benefits Under ERISA**

6  
7 XXXVII.

8 Defendant Aetna abused its discretion because its decisions denying the  
9 plaintiff's disability benefits were arbitrary and capricious and have no rational support  
10 in the evidence, and were caused or influenced by Aetna's consultants' financial  
11 conflicts of interest and also by Aetna's and/or the Plan(s)' own inherent financial  
12 conflict(s) of interest. These conflicts of interest have undermined the full and fair  
13 review required by ERISA, 29 U.S.C. 1133(2) and 29 C.F.R. §2560.503-1(g)(1) and  
14 (h)(2).

15 XXXVIII.

16 Under the de novo standard of review, Aetna's decisions were  
17 erroneous, contrary to the Plan(s) terms, and contrary to the medical and vocational  
18 evidence.

19 XXXIX.

20  
21 Upon information and belief, Aetna, the Plans, and the purportedly  
22 "independent" consultant Rollins and Aetna's other consultants who evaluated the  
23 plaintiff's subject claim also suffer from financial conflicts of interest and bias which  
24 have also precluded a full and fair review of the plaintiff's claim.

25 XL.

26 As a rationale for denying benefits, Defendant Aetna has improperly  
27 favored said hired-consultants' conclusions over the conclusions of treating  
28 physicians; specifically that in reaching their conclusions, defendant Aetna's

1 physician consultants failed to consider all of the plaintiff's signs, symptoms,  
2 impairments and limitations.

3  
4 XLI.

5 That the defendants' consultants' opinions are so conclusory,  
6 unsubstantiated and against the weight of the evidence as to indicate that said  
7 consultants were improperly influenced by Aetna to support a benefits denial and/or  
8 that said consultants had a financial interest in supporting the claim denial in order  
9 to ensure repeat business, which infected the claim process and constitutes a  
10 procedural irregularity under ERISA that denied the plaintiff the full and fair review to  
11 which she is entitled.

12  
13 XLII.

14 The plaintiff is entitled to discovery regarding the effects of the  
15 procedural irregularities that occurred during the claims handling process and also  
16 regarding the effects of Aetna's consultants and Aetna's and/or the subject Plan(s)'  
17 financial conflicts of interest upon the claim denials.

18  
19 XLIII.

20 The plaintiff has been injured and has suffered damages in the form of  
21 lost LTD benefits as a result of the defendants' wrongful decisions to deny the plaintiff  
22 disability benefits.

23  
24 XLIV.

25 Pursuant to ERISA, 29 U.S.C. § 1132, the plaintiff is entitled to recover  
26 unpaid disability benefits, prejudgment interest, reasonable attorney's fees, and costs  
27 from defendants and/or is entitled to an order enforcing her right to disability benefits  
28 under the LTD plan.

XLV.

As a direct and proximate result thereof, based upon the evidence

1 submitted by Plaintiff to Defendants establishing that Plaintiff has met the STD and  
2 LTD Plan(s)' requisite disability definitions continuously since March 27, 2010,  
3 Plaintiff is entitled to her monthly disability insurance payments retroactive to the  
4 subject denial date of May 12, 2014 until the end of March 2015 when the plaintiff's  
5 spinal condition improved and her post-operative therapy treatment concluded.

6 XLVI.

7  
8 The plaintiff has further been injured and suffered damages by losing  
9 other benefits to which she may have been entitled under her employer's  
10 ERISA-governed benefits plans.

11 XLVII.

12 Upon information and belief that Group Control Number 3168771 also  
13 contains a waiver of premium benefit on certain life insurance benefits and policies  
14 to which the Plaintiff is entitled if disabled as alleged in the causes of action  
15 heretofore, and that in connection with the denial of the subject LTD benefits, the  
16 plaintiff was notified that she no longer met eligibility requirements for said premium  
17 waiver and therefore has already lost or soon will lose the substantial ERISA benefit  
18 of said life insurance policies.

19 XLVIII.

20 That the Defendants, Aetna, the Plans and Employer Marriott, stand as  
21 fiduciaries to one another and to the plaintiff, and each defendant has the power to  
22 bind the other, as agent.

23 XLIX.

24  
25 That the actions of Defendants are a breach of contractual and/or  
26 fiduciary duties inuring to the Plans pursuant to the requirements of 29 U.S.C.  
27 §502(a)(1)(B).

1 L.

2 That the defendants' actions are an unwarranted breach of the subject  
3 Long Term Disability Plan, representations by Plan(s)' documents, ERISA, and the  
4 contract(s) of insurance, and have caused and continue to cause the plaintiff great  
5 financial hardship. That the plaintiff meets the subject and requisite disability  
6 definition(s) and provisions of her "own" and/or "any" occupation policy provisions of  
7 the subject LTD Plan(s), with special essential duties and hourly provisions.

8 LI.

9 That the plaintiff's damages are \$155,435.36 calculated under the  
10 subject LTD Plan as 60% of \$27,297.28 gross monthly salary from May 13, 2014  
11 through March 31, 2015, minus \$13,387.50 Social Security Disability benefit for the  
12 same time period of May 13, 2014 through March 31, 2015 (as derived from Ms.  
13 Albert's \$1,575.00 monthly Social Security Disability benefit).

14  
15  
16 WHEREFORE, the Plaintiff prays judgment as follows:

17 A. For a judgment for benefits and an Order such benefits continue, per ERISA,  
18 including 29 U.S.C. § 1132(g)(2).

19 B. For \$155,435.36 for LTD benefits from May 13, 2014 through March 31, 2015,  
20 through judgment and post-judgment as appropriate, and all monthly payments and  
21 accumulated interest due from day of judgment.

22 C. For declaratory judgment granting Plaintiff all rights and benefits under the written  
23 Policies/Plans, and to award the plaintiff a money judgment for all sums due and  
24 owing with interest from time of breach; and/or an order enforcing the plaintiff's right  
25 to benefits under the subject Plans;

26  
27 D. For all other damages as may be just and proper under Arizona State law or  
28 developing ERISA and/or other Federal case and statutory law.

1 E. For attorney fees, pursuant to ERISA, see 29 USC § 1132(g)(1).

2 F. For appropriate relief under 29 USC § 502(a)(1)(B), to redress such violations, or  
3 to enforce any provision of this title or the terms of the Plans.

4 G. For reimbursement for any funds paid by Plaintiff or due the plaintiff for the  
5 continuation of life insurance policies as an employee benefit dependent upon  
6 STD//LTD-eligibility on behalf of the plaintiff and any dependents, and, in the  
7 eventuality of death during the pendency of this litigation, to full payment on all  
8 policies to the named beneficiaries.

9 H. For costs and disbursements of this action and interest on all sums owed until  
10 payment.  
11

12  
13 DATED this 5<sup>th</sup> day of June 2015

14 THE LAW OFFICE OF PAUL J. DOMBECK, PLLC  
15

16 By s/ Paul J. Dombeck  
17

18 PAUL J. DOMBECK, ESQ.  
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21 Phoenix, Arizona 85069-7315  
22 Attorney for Plaintiff  
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CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of June, 2015, I electronically transmitted the attached document to the Court Clerk's Office using the CM/ECF System for filing and transmittal of a Parties' Civil Coversheet, Summons and Complaint.

s/ Paul J. Dombeck

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Paul J. Dombeck